

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:CTM:SF:POSTF-100081-02

date: January 30, 2002

to: Eve M. Holquin, Exam Manager

from: CC:LM:CTM:SF

subject: [REDACTED]

The following is in response to a request for advice from Leslie Woo.

ISSUE

Who is the proper party to act as agent for the [REDACTED] consolidated group for purposes of executing an extension of the statute of limitations on assessment?

CONCLUSION

[REDACTED], now known as [REDACTED] is still the common parent and agent for the consolidated group and is the proper party to execute the statute extension. See below for the proper form of the caption to be used for the Form 872.

FACTS

For the short taxable year [REDACTED] - [REDACTED], [REDACTED] was the common parent of an affiliated group of corporations that filed a consolidated return. Exam is auditing that return.

[REDACTED] was a Delaware general partnership, but it elected under the check-the-box regulations to be treated for federal tax purposes as a corporation. [REDACTED] was owned by two U.K. subsidiaries of [REDACTED] [REDACTED] % and [REDACTED] %.

On [REDACTED], [REDACTED] was converted under Delaware law

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into a limited partnership and its name was changed to [REDACTED]. On the same date, [REDACTED] was converted under Delaware law into a Delaware corporation and its name was changed to [REDACTED]. The Taxpayer's representative stated that the conversion to a limited partnership was a necessary step under Delaware law to converting to a corporation.

Exam and the Taxpayer want to extend the statute of limitations on assessment for the short taxable year.

LAW

Delaware law provides that the conversion of a general partnership into a limited partnership shall not deem to constitute a dissolution of the converting entity and shall constitute a continuation of the existence of the converting entity in the form of a limited partnership. When the general partnership has been converted to a limited partnership, the limited partnership shall be deemed to be the same entity as the converting entity. 6 Del. C. § 17-217(g).

Delaware law further provides that in the conversion of a limited partnership into a corporation, the converting entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the converting entity and shall constitute a continuation of the existence of the converting entity in the form of a corporation of Delaware. 8 Del. C. § 265(f).

Treas. Reg. § 1.1502-77(a) provides that the common parent, with certain exceptions, is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. The common parent in its name will give waivers, and any waiver so given, is considered as having also been given or executed by each such subsidiary. Thus, the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. *Id.*

I.R.C. § 708(a) provides that a partnership is considered as continuing if it is not terminated. Section 708(b) Code provides that a partnership shall be considered as terminated only if either (A) no part of any business, financial operation, or venture of the partnership continues

to be carried on by any of its partners in a partnership, or (B) within a twelve-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capitals and profits.

The common parent corporation shall remain as the common parent irrespective of a mere change in identity, form, or place of organization of such common parent corporation (see section 368(a)(1)(F)). I.R.C. § 1.1502-75(d)(2).

Section 368(a)(1)(F) of the Code provides that a mere change in identity, form or place of organization, however effected, is a reorganization.

DISCUSSION

1. [REDACTED]'s Check the Box Election Was Not Terminated by the Conversion to a Limited Partnership.

The conversion of [REDACTED] into a limited partnership did not terminate its election to be treated as a corporation under the check-the-box rules. The conversion was a change in the form of the partnership, but did not terminate it. The election is therefore undisturbed.

Under Delaware law, the conversion constitutes a continuation of the existence of the general partnership in the form of a limited partnership. 6 Del. C. § 17-217(g) (2001). I.R.C. § 708(a) provides that a partnership is considered as continuing if it is not terminated. The conversion is an exchange under section 721 of the Code and not a termination under I.R.C. § 708(b). Rev. Rul. 84-52, 1984-1 C.B. 157. For federal tax purposes, therefore, the limited partnership is considered a continuation of the general partnership. See Rev. Rul. 95-37, 1995-1, C.B. 130 (the conversion of an interest in a domestic partnership into an interest in a domestic LLC that is classified as a partnership for federal tax purposes does not cause a termination under § 708).

2. [REDACTED] Did Not Cease Being the Common Parent on the Conversion to a Corporation.

The conversion of [REDACTED] from a Delaware limited partnership that is classified as a corporation for federal tax purposes into a Delaware corporation was an I.R.C. § 368(a)(1)(F) reorganization. A section 368(a)(1)(F) reorganization is a mere change in identity, form or place of organization, however effected.

The conversion was a mere change in form. 8 Del. C. § 265(f). A common parent remains the common parent irrespective of a 368(a)(1)(F) reorganization. Treas. Reg. § 1.1502-75(d)(2).

3. Conclusion.

[REDACTED], now known as [REDACTED], is still the common parent and agent for the [REDACTED] consolidated group. It is the proper party to execute the waiver of the statute of limitations on assessment, but under its new name. Accordingly, the Form 872 should be captioned as follows:

[REDACTED] (EIN [REDACTED]) (formerly [REDACTED]), common parent agent of the [REDACTED] (EIN [REDACTED]) [REDACTED] consolidated group.*

There should be an asterick following "group." At the bottom of the Form 872 add:

* This is with respect to the consolidated tax of the [REDACTED] consolidated group for the short taxable year [REDACTED] to [REDACTED]

If you have any questions or comments, please call the undersigned.

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